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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,811

01/16/2004

Patrick Miles

039US1

8249

30328

7590

02/16/2010

NuVasive

c/o CPA Global

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EXAMINER

PATEL, YOGESH P

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

02/16/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Supplemental  
Notice of Allowability**

Application No.

10/759,811

Examiner

YOGESH PATEL

Applicant(s)

MILES ET AL.

Art Unit

3732

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 02/03/2010.
2. ☒ The allowed claim(s) is/are 1-9,11-17 and 20-32.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date See Continuation Sheet
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_.

/YOGESH PATEL/  
Examiner, Art Unit 3732

/RLewis/  
Primary Examiner, AU 3732

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: 01/12/2010, 01/29/2010.

**Examiner's Comments/Response to arguments**

Applicant's arguments filed 02/03/2010 regarding claim 16 is being addressed below.

***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance: Claims 1-9, 11-17, 20-32 are allowed. The art of record does not teach or render obvious a surgical access system having a distraction assembly having at least two dilators and a primary retractor assembly including plurality of retractor blades coupled with a handle assembly and extending generally perpendicularly relative to arm portion of the handle assembly and each of the blades having concave inner face and convex exterior face, the blades abutting each other in a closed position and formed a closed perimeter which defines a lumen having an internal circumference larger than the external circumference of the larger dilator and a supplemental retractor assembly having an arm with an additional retractor blade coupled to the arm and is selectively positionable adjacent to the primary retractor assembly subsequent to moving the plurality of retractor blades into the open position such that the additional plate fills a space in the open perimeter. Further, the art of record does not teach or render obvious a method of accessing a surgical target site within a spine including the system having the structure as mentioned above and further including simultaneously introducing the plurality of retractor blades over the outermost dilator of the distraction assembly along the lateral, trans-psoas path to the targeted lumbar spinal disc while in said closed position; and actuating said handle assembly to move the plurality of retractor blades to the open position so that the plurality of retractor blades create an operative corridor along the lateral, trans-psoas path to the targeted lumbar spinal disc and releasably engaging a fixation element with at least one of the plurality of retractor blades so that

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a distal portion of the fixation element extends distally from the at least one retractor blade and penetrates into a lateral aspect of the lumbar spine, wherein the fixation element secures the at least one retractor blade to the lumbar spine; and inserting an implant through the operative corridor created by the plurality of retractor blades along the lateral, trans-psoas path to the targeted lumbar spinal disc.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Information Disclosure Statement***

The information disclosure statements filed 01/12/2010 and 01/29/2010 have been considered by the Examiner.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOGESH PATEL whose telephone number is (571)270-3646. The examiner can normally be reached on 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YOGESH PATEL/  
Examiner, Art Unit 3732

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732